



UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

GEORGE CHACHAS,

Plaintiff,

v.

CITY OF ELY, NEVADA, et al.,

Defendants.

3:07-CV-0158-LRH-VPC

ORDER

Presently before the court is defendants' motion for attorney's fees filed April 14, 2009. Doc. #44¹. Plaintiff George Chachas ("Chachas") filed an opposition on April 29, 2009. Doc. #48. Thereafter, defendants filed a reply on May 18, 2009. Doc. #53.

I. Facts and Procedural History

On March 30, 2007, Chachas filed a civil rights complaint against the city of Ely and members of the Ely City Council. Doc. #1. Defendants moved for summary judgment. Doc. #30. The court granted defendants' motion and the case was dismissed. Doc. #42. Thereafter, defendants moved for attorney's fees pursuant to 42 U.S.C. § 1988. Doc. #44.

II. Discussion

The court, in its discretion, may award reasonable attorney's fees to a prevailing party in a

¹ Refers to the court's docket entry number.

1 civil rights action. 42 U.S.C. § 1988. However, an award of attorney's fees to a defendant is
2 limited. *Maag v. Wessler*, 993 F.2d 718, 719 (9th Cir. 1993) (citing *Jensen v. Stangel*, 762 F.2d
3 815, 817 (9th Cir. 1985). "A court may grant attorney's fees to a defendant under section 1988 *only*
4 under the limited circumstances where the action is frivolous, unreasonable, or without
5 foundations." *Id.* (emphasis added).

6 An action is frivolous when the plaintiff's arguments are wholly without merit or when the
7 plaintiff "pursues the litigation with an improper purpose, such as to annoy or embarrass the
8 defendant." *Douglas v. Pfingston*, 284 F.3d 999, 1006 (9th Cir. 2002). Here, the court finds that
9 Chachas' complaint was based on an incorrect, but reasonable interpretation of the laws he was
10 challenging, and therefore, his complaint had a sufficient legal foundation. Accordingly, his
11 complaint was not frivolous and defendants are not entitled to attorney's fees.

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13 IT IS THEREFORE ORDERED that defendants' motion for attorney's fees (Doc. #44) is
14 DENIED.

15 IT IS SO ORDERED.

16 DATED this 21st day of September, 2009.

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19 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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